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**MEMC Electronic Materials, Inc. and International Association of Machinists & Aerospace Workers, AFL-CIO.** Case 14-CA-27224

April 10, 2003

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on December 3 and 17, 2002, respectively, the General Counsel issued the complaint on December 17, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 14-RC-12348. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On January 21, 2003, the General Counsel filed a Motion for Summary Judgment and brief in support. On January 23, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent thereafter filed a response in opposition and a Cross-Motion for Summary Judgment, with a brief in support.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain and to furnish information to the Union, but contests the validity of the certification based on its contentions in the underlying representation proceeding that it should have been allowed to withdraw from the stipulated election agreement and that the Regional Director committed prejudicial error by opening and counting the ballots while its motion for a stay was pending before the Board.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine

the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges that, by letter dated November 5, 2002, the Union requested the following information from the Respondent:

1. Name, address, date of hire, age, and gender.
2. Classification, rate of pay, and job description.
3. Shift schedules and hours of work.
4. Description of employees' health plan, including the Respondent's contribution to the plan and employee expenses.
5. Description of the employees' life insurance plan, including the cost to the Respondent and employees.
6. Description of all employee pension retirement, savings or 401(k) plans, including the cost to the Respondent and employees.
7. Description of all other employee benefit plans, such as paid vacations, paid holidays, paid sick leave, funeral leave, jury duty, safety clothing, shoes, glasses, gloves, etc.
8. Information regarding how the Respondent computes bonuses or incentive pay.
9. Copies of all existing work rules, regulations and policies.

The Respondent's answer admits that the Respondent refused to provide this information to the Union, but denies that the information is necessary and relevant to the Union's duties as the collective-bargaining representative. However, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See *Cheboygan Health Care Center*, 338 NLRB No. 115 (2003); *Baker Concrete Construction*, 338 NLRB No. 48 (2002); *Cerro Wire & Cable Co.*, 337 NLRB No. 63 (2002), and cases cited therein. The Respondent has not asserted any basis for rebutting the relevance of the information requested by the Union, apart from its argument, rejected above, that the Union's certification is invalid.

Accordingly, we grant the Motion for Summary Judgment,<sup>1</sup> and will order the Respondent to bargain and to furnish the requested information.<sup>2</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with offices and a manufacturing facility in St. Peters, Missouri (the Respondent's facility), has been engaged in the manufacture, distribution, and nonretail sale of silicon wafers.

During the 12-month period ending November 30, 2002, the Respondent, in conducting its business operations, sold and shipped from its St. Peters, Missouri facility goods valued in excess of \$50,000 directly to points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the election held on June 5 and 6, 2002, the Union was certified on October 24, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed in the MTT classification at the Employer's Saint Peters, Missouri facility, EXCLUDING all utility operators, office clerical and professional employees, guards, supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

###### B. *Refusal to Bargain*

About November 5, 2002, the Union, by letter, requested the Respondent to bargain and to furnish information, and, since about November 26, 2002, the Respondent has failed and refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>1</sup> Accordingly, we deny the Respondent's Cross-Motion for Summary Judgment.

<sup>2</sup> Members Schaumber and Walsh did not participate in the underlying representation proceeding. However, they agree that the Respondent has not raised any new matters or special circumstances warranting a hearing or reconsideration of the decision made in the representation proceeding, and that summary judgment is appropriate.

#### CONCLUSION OF LAW

By failing and refusing on and after November 26, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, MEMC Electronic Materials, Inc., St. Peters, Missouri, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists & Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed in the MTT classification at the Employer's

Saint Peters, Missouri facility, EXCLUDING all utility operators, office clerical and professional employees, guards, supervisors as defined in the Act, and all other employees.

(b) Furnish the Union information it requested in its letter dated November 5, 2002.

(c) Within 14 days after service by the Region, post at its facility in St. Peters, Missouri, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 26, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 10, 2003

Wilma B. Liebman,	Member
Peter C. Schaumber	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Association of Machinists & Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time employees employed in the MTT classification at our Saint Peters, Missouri facility, EXCLUDING all utility operators, office clerical and professional employees, guards, supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union the information it requested on November 5, 2002.

MEMC ELECTRONIC MATERIALS, INC.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."